

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7263 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MODH MAHENDRAKUMAR DASHRATHLAL

Versus

H K DAS

Appearance:

MR PK JANI for Petitioner

NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/09/2000

ORAL JUDGEMENT

The petitioner has challenged the impugned order
of the District Collector made on 17-8-1992 at Annexure
"E" to the petition by which the Collector in exercise of
his powers under Section 258 of Gujarat Municipalities

Act, 1963 directed that an amount of Rs.9,400/- be recovered from the petitioner for the alleged encroachment done by him.

2. The petitioner was a handicapped person and he was having an artificial leg known as "Jaipur leg". Since he was finding it difficult to climb the staircase of his house, he had put up a platform in front of his house. He tried to get the construction regularised, but failed. The Municipality, by its resolution at Annexure "D", having regard to the fact that the petitioner had removed the encroachment, directed that only 5% of the amount of Rs.9,400/-, which was payable for such encroachment, may be recovered from the petitioner. The Collector took up the matter for his consideration under Section 258 of the said "Act" and directed that the amount of Rs.9,400/should be recovered from the petitioner. It was observed that it was the duty of the elected members of the Municipality to enforce such recoveries.

3. It is evident that the petitioner was not heard before making the order by the Collector. As held by this Court in H.H.Parmar Vs. Collector, Rajkot and Anr., reported in Vol.XX(2) GLR 1979, while exercising powers under Section 258 of the said "Act", the Collector is required to give a reasonable opportunity of being heard to a person, who would be adversely affected by his order. The Collector also failed to note that the petitioner was a handicapped person, fitted with a "Jaipur leg" and that the encroachment, which he had made out of necessity for getting into his house, was removed by him. Therefore, the Councillors of Municipality cannot be said to have acted in any objectionable manner, when they confined the recovery only to 5% of the amount payable. In fact, the Councillors displayed proper sensitivity towards the petitioner, who admittedly was a handicapped person.

4. The impugned order dated 17-8-1992 (Annexure "E" to the petition), made by the Collector cannot be sustained, in view of the fact that the petitioner was not heard before making that order. It is, therefore, set aside. The resolution of the Municipality at Annexure "F" to the petition, which was passed consequential upon the order of the Collector, also cannot now stand, and is set aside. Rule is made absolute accordingly, with no order as to costs.

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